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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/779,308	02/17/2004	Gary Barron	HON158	7625

34356 7590 04/04/2005

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EXAMINER

TREMBLAY, MARK STEPHEN

ART UNIT	PAPER NUMBER
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2876

DATE MAILED: 04/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/779,308	Applicant(s) BARRON, GARY	
	Examiner Mark Tremblay	Art Unit 2876	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent #5,884,271 to Pitroda ("Pitroda" hereinafter). Pitroda discloses a multifunctional data card for carrying personal information about a user, said card comprising:

a housing having a generally rectangular shape (see figures 1, 3) and including a keypad (see e.g. figures 9-21) for initializing a selected program and for entering a user access code unique to the selected program (see also column 14, lines 7-17),

a microprocessor 33 disposed within said housing and being programmable via said keypad for processing data associated with a plurality of banking accounts (see figure 4) that are owned by a user;

a display panel 30 operably connected to said microprocessor and for displaying a unique barcode (see column 13, lines 61-65) associated with the selected program so that a vendor may access data corresponding to the selected program;

a fingerprint pad (see claim 9) attached to said microprocessor for verifying a cardholder identity;

a memory connected to said microprocessor (see figure 3) and for storing user data therein so that said card will be switched to an inoperable mode after a predetermined number of unauthorized attempts to access said card have been executed (see e.g. column 16, lines 31-40), and

a power supply source 301 disposed within said housing and electrically coupled to said microprocessor.

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Re claims 2, 6, and 10 see figure 3, item 39. The card includes an RF/IR option to "communicate" which inherently involves mo[dulation] and dem[odulation], meaning a modem. RF is jargon for radio frequency, and IR means infrared, both of which are wireless technologies. These would be alternatives to the other communication options, such as the telephone interface 55 located in the CIU. See also column 13, lines 29-49 and column 10, lines 22-25.

Re claims 4, see column 9, lines 49-60.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-4 and 7-8, and 10-11 are rejected under 35 U.S.C. § 103 as being unpatentable over Pitroda.

Pitroda discloses a multifunctional data card for carrying personal information about a user as described above and further teaches a speaker to provide a sound interface to the card, but fails to expressly teach that the speaker may be used to alert the user of unauthorized attempts. Pitroda clearly teaches that the user should be provided with a "prompt" if the user does not enter the correct security code. Pitroda also teaches that the card may be shut down if a predetermined number of incorrect (which are technically indistinguishable from unauthorized) attempts to access the card. This would represent a severe hardship to the user who uses Pitroda in the intended fashion-- as a replacement of all of their cards. If all of their cards simultaneously stopped working, e.g. on vacation, and the user was required to be re-activated by the company that issued the card, the user would be seriously inconvenienced. Thus, an audible warning would be appropriate to alert the user of the reduced number of chances to input the code

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correctly. Most obviously, the speaker/beeper would merely beep the number of times corresponding to the number of missed attempts, so that the user would become aware of the approaching limit for attempting to input the correct number, and concentrate more closely on getting it right. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use both the display and the beeper to provide a warning of the number of missed/unauthorized attempts to access the card, because Pitroda teaches that the user should be "prompted" (without particularizing the means of the prompt) and provides both a display and a speaker for prompting a user. This type of procedure is second nature to humans, as obvious as an umpire calling out "strike one," "strike two," and "strike three" rather than merely counting the strikes and keeping the number to himself, or only holding up fingers. The card is clearly counting strikes against the user. It should obviously call them out with its speaker/beeper, and display them on the display. It is enough for Pitroda to mention the counting of strikes and the prompting of the user for a skilled artisan to find this obvious.

Re claims 4, 8, and 11, Pitroda teaches an LED, but not a plurality of lights. Providing a plurality of lights in this case is an obvious multiplication of parts, with countless real world examples. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a plurality of LEDs because this would provide more light, more even light, and more redundant light (in case one LED goes out). The number of real world examples of providing a number of lights to light up an area rather than just one makes the obviousness very difficult to argue against.

Claims 5, 9, and 12 are rejected under 35 U.S.C. 103 as being unpatentable over Pitroda in view of U.S. Patent #5,192,947 to Neustein. Pitroda discloses a UET card with a cover/case 15, but does not teach exactly how the cover is configured. Clearly, a cover case designed to protect a card which is designed to be carried in a pocket should cover the controls on the card which activate it, in order to prevent accidental activation of the card. This would be a big problem if the card interpreted random bumps as unauthorized access attempts. Neustein teaches a pocket sized device which can act as a pager and a credit card, wherein one portion of the housing of the device is hingedly attached to a second portion (see figures 4a - 4c), wherein the flap 15 serves as a cover to protect the displays 16 and 22, and switches 26 and 28. It would have

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been obvious to one having ordinary skill in the art at the time the invention was made to provide a cover on Pitroda to protect the display and switches in the form taught by Neustein because Neustein provides detailed teachings for constructing a cover which fits over a credit card sized device which is to be held in a pocket, the cover protecting displays and switches, similar to those taught in Pitroda.

Response to Arguments

Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.

Voice

Inquiries for the Examiner should be directed to Mark Tremblay at (571) 272-2408. The Examiner's regular office hours are 10:30 am to 7:00 pm EST Monday to Friday. Voice mail is available. If Applicant has trouble contacting the Examiner, the Supervisory Patent Examiner, Michael Lee, can be reached on (571) 272-2398. Technical questions and comments concerning PTO procedures may be directed to the Patent Assistance Center hotline at 1-800-786-9199 or (703) 308-4357.


MARK TREMBLAY
PRIMARY EXAMINER

April 1, 2005